

(6) Opportunity to have records or documents relevant to the issues produced by their custodian when such records or documents are kept by or for the grantee or its subrecipient in the ordinary course of business.

(7) Opportunity to question any witnesses or parties.

(8) The right to an impartial hearing officer.

(9) A verbatim record of the proceeding.

(10) A written decision from the hearing officer to the complainant(s) and any other interested parties within 60 days of the filing of the complaint. This period may be extended with the written consent of all of the parties for good cause. The written decision shall include a statement of facts, a statement of reasons for the decision and a statement of any remedies to be applied. Where the hearing officer's decision is the grantee's final decision it shall be provided to the parties by certified or registered mail, return receipt requested.

(11) Where a complaint procedure provides for a grantee's review of the hearing officer's decision, the grantee shall complete its review and provide a final written decision to the complainant(s), and any other parties, by certified or registered mail, return receipt requested, as provided in paragraph (c)(10) of this section within 60 days after the complaint is filed.

(12) Where local law, personnel rules or other applicable requirements specify procedures in addition to those specified above, similarly employed JTPA participants shall be notified of their right to use the same procedures.

§ 636.4 Grievance procedures at the employer level.

(a) *Policy.* (1) Whenever the grantee or subrecipient is an employer, it shall continue to operate or shall establish and maintain for its participants a grievance procedure relating to the terms and conditions of JTPA employment. The employer who does not have a grievance procedure may use the complaint procedure established under § 636.3. Employers shall inform participants of the procedures they are to follow.

(2) A participant who elects the grievance procedure in this section, may also pursue a complaint under § 636.3 where there is an alleged violation of the Act, regulations, grant or other agreement under the Act.

(b) *Equal benefits.* Where local law, personnel rules, or other applicable requirements specify procedures (including procedures for any adverse action or for termination of employment), similarly employed JTPA participants shall be notified of their right to use the same procedures, as well as JTPA procedures.

§ 636.5 Exhaustion of grantee level procedure.

(a) *Exhaustion required.* No complainant may file a complaint with the Department until the grantee level procedures specified in § 636.3 have been exhausted.

(b) *Exhaustion exceptions.* Complainants who have not exhausted the procedures at the grantee level may file the complaint at the Federal level, and the Department may accept such complaint if it determines that:

(1) The grantee or subrecipient has not acted within the time frames specified in § 636.3; or

(2) The grantee's or subrecipient's procedures are not in compliance with § 636.3; or

(3) An emergency situation exists.

§ 636.6 Complaints and investigations at the Federal level.

(a) *General; final determination of reliable and probative evidence.* Where local administrative remedies have been exhausted, section 144(c) of the Act requires that a final determination of the complaint shall be made within 120 days after the Department receives the complaint. The Department's resolution of non-criminal matters pursuant to section 144(c) of the Act consists of the final determination under § 636.8(e) of whether there is reliable and probative evidence to support the allegation or belief that a grantee or subrecipient is failing to comply with the requirements of the Act, regulations, grant or other agreement under the Act.

(b) *Complaints.* (1) Every complaint shall be filed in writing before the commencement of any investigation or corrective action shall be required. Complaints alleging discrimination under section 167, will be filed with the Regional Director, Office of Civil Rights (OCR). All other JTPA complaints will be filed with the appropriate Grant Officer. However, a complaint timely filed with either the Grant Officer or the Regional OCR Director shall be deemed properly filed and shall be referred (as necessary) to the appropriate office. The complaint shall be filed only after the grantee level procedures in § 636.3 have been exhausted and no later than 30 days from the date of receipt of the written decision or notice required by § 636.3. The complaint should contain the following:

- (i) The full name, telephone number (if any), and address of the person making the complaint.
- (ii) The full name and address of the respondent (the grantee or subrecipient or person against whom the complaint is made).
- (iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.
- (iv) Where known, the provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated.
- (v) A statement disclosing whether proceedings involving the subject of the complaint have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case.
- (vi) A copy of the final decision of the recipient or subrecipient issued pursuant to § 636.3.

(2) A complaint will be considered to have been received upon receipt by the appropriate Grant Officer. To be acceptable, the complaint must be a written statement sufficiently precise to both identify those against whom the allegations are made and to fairly afford the respondent an opportunity to prepare a defense. A complaint may be amended to cure defects or omissions, or to clarify and amplify allegations made therein, and such amendments

relate back to the original filing date for purposes of timely filing.

(3) A complaint once filed may be withdrawn only with the consent of the Grant Officer. If the complainant fails to cooperate or is unavailable, the complaint may be dismissed upon reasonable notice to the last known address of the complainant.

(c) *Investigation of complaints.* Whenever the Grant Officer receives a complaint filed in accordance with paragraphs (a) and (b) of this section, the complaint shall be investigated if it alleges that any person, grantee or subrecipient has failed to comply with the requirements of the Act, regulations, grant or other agreements under the Act. The Grant Officer shall promptly issue a notice to the grantee or subrecipient which shall include a copy or summary of the complaint and which shall direct the grantee or subrecipient to forward a copy of the complete administrative file, including a copy of the certified verbatim transcript of the hearing, within 15 days of receipt of such notice to the Grant Officer. Such investigation shall be completed and a conclusion made pursuant to § 636.8(e) within 120 days of the filing of the complaint, except that the time may be extended with the written consent of all the parties.

(d) *Onsite review and other bases for investigation.* If after an onsite review, monitoring visit, review of reports, data or other information, the Grant Officer has reason to believe that a grantee or subrecipient is failing to comply with the requirements of the Act, regulations, grant or other agreements under the Act, the Grant Officer or other designated authority shall inquire into the matter.

(e) *Utilizing other services.* With the consent and cooperation of State agencies charged with the administration or enforcement of State laws, the Secretary may elect for the purpose of carrying out this part, to utilize the services of State, local and Tribal agencies and their employees, and notwithstanding any other provision of law, may reimburse, in whole or in part, such State and local agencies and their employees for services rendered for such purposes.

(f) *Criminal investigation.* Notwithstanding any other provision of this part, investigation by the Department of any matter concerning a potential Federal criminal violation shall be conducted as the Inspector General shall direct pursuant to the powers granted by the Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101.

§ 636.7 Subpoenas.

(a) *Subpoenas in non-Inspector General investigations.* (1) The Department, through the appropriate Assistant Secretary, may issue a subpoena directing the person named therein to appear before a designated representative at a designated time and place to verify or to produce documentary evidence, or both, relating to any matter arising under the Act being investigated. The Assistant Secretary, Solicitor or the Associate Solicitor for Employment and Training Legal Services, for good cause shown, may extend the time prescribed for compliance with such subpoenas.

(2) Any motion to limit or quash any investigational subpoena shall be filed with the Chief Administrative Law Judge within 10 days after service of the subpoena, or, if the return date is less than 10 days after service of the subpoena, within such other time as may be allowed by the assigned Administrative Law Judge.

(3) The timely filing of a motion to limit or quash an investigational subpoena shall stay the requirement of a return on the portion challenged. If the Administrative Law Judge rules subsequent to the return date, and the ruling denies the motion in whole or in part, the Administrative Law Judge shall specify a new return date.

(4) All motions to limit or quash subpoenas, and the responses thereto, shall be part of the public record of the Office of the Administrative Law Judges except as otherwise ordered or provided under these regulations.

(b) *Noncompliance.* (1) In cases of failure to comply with compulsory processes, appropriate action may be initiated including actions for enforcement, forfeiture, penalties or criminal actions.

(2) The Solicitor of Labor, with the consent of the Attorney General, may:

(i) Institute in the appropriate district court on behalf of the Department an enforcement proceeding in connection with the failure or refusal of a person, partnership, corporation, recipient or other entity to comply with or to obey a subpoena if the return date or any extension thereof has passed; or

(ii) Request on behalf of the Department the institution of civil actions, as appropriate, if the return date or any extension thereof has passed including seeking civil contempt in cases where a court order enforcing compulsory process has been violated.

§ 636.8 Initial and final determination; request for hearing at the Federal level.

(a) *Initial determination.* Upon the conclusion of a review of the entire administrative record of an investigation conducted pursuant to § 636.6 or after the conclusion of the comment period for audits, the Grant Officer shall make an initial determination of the matter in controversy including the allowability of questioned costs or activities. Such determination shall be based upon the requirements of the Act, regulations, grants or other agreements, under the Act. The determination may conclude either:

(1) That based upon the entire record there is no violation of the Act, regulations, grants or other agreements under the Act; or

(2) That there is evidence to support the allegation, or finding of questioned costs or activities.

(b) *Contents of initial determination.* (1) In the event that the Grant Officer makes a finding that there is evidence to support the allegation of a violation the initial determination shall:

(i) Be in writing;

(ii) State the basis of the determination, including factual findings and conclusions;

(iii) Specify the costs or activities disallowed;

(iv) Specify the corrective actions required and/or that sanctions may be imposed; and

(v) Give notice of an opportunity for informal resolution of the matters as necessary to the appropriate parties, which should include all interested parties specified by the Grant Officer.